

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2003-0104

For

Shamrock Materials, Inc.

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Shamrock Materials, Inc. (hereinafter Shamrock) discharged dirt fill material within the banks of the Russian River, in an area located directly adjacent to the former Louisiana Pacific Mill, Cloverdale, Sonoma County.
2. On August 12, 2003, the Regional Water Board received a complaint regarding the placement of dirt fill at the Shamrock site against the west side levee that separates the Russian River from the former Louisiana Pacific mill site. Regional Water Board staff contacted Shamrock's Paul Cheetham and requested that additional soil placement be suspended until an on-site inspection could be held to view the situation.
3. On August 13, 2003, Regional Water Board staff met on-site with Shamrock's Paul Cheetham, and a Brunsing Associates, Inc., employee to discuss the soil placement issue. Paul Cheetham stated at the beginning of the inspection that soil disposal activities had been halted as of this date. Approximately 3,600-4,000 yards of soil had been placed along the levee in the previous three days. The soil pile measured from 10-20 feet high, by 15 feet wide, along an approximate 600-foot length.
4. During the inspection, staff observed that the fill material was being placed directly within a secondary channel of the Russian River. High flow markings on the adjacent levee were visible well above the top level of the fill material. Round rock was evident below and around where the soil was placed. The disposal area appears to be subject to inundation during high flow events. Regional Water Board staff indicated to Paul Cheetham that the soil was placed within the normal high water line of the Russian River and would likely be required to be removed.
5. On August 13, 2003 Shamrock's Dave Ripple left a message with Regional Water Board staff, indicating that the soil placement was a part of the approved revegetation plan, related to adjacent Shamrock river bar mining activities, as per both Sonoma County permits and Regional Water Board 401 certification program approval. A review of the county permit with Sonoma County permitting authorities, and a discussion with

Regional Water Board staff responsible for issuance of the 401 certification indicated that the revegetation plan did not include any mention of soil importation to an areas within the banks of the river.

6. The beneficial uses of the Russian River, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Warm freshwater habitat
 - j. Cold freshwater habitat
 - k. Rare, threatened, or endangered species
 - l. Migration of Aquatic Organisms
 - m. Spawning, Reproduction and/or Early Development
 - n. Wildlife habitat
 - o. Estuarine habitat
7. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
 - Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
 - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
8. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge.”

9. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
 - Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
10. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
 - Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
 - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency*

affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”

- *Section 13304(a) - “Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”*
11. As explained above, the Discharger has placed dirt fill material into an area within the ordinary high water level of the Russian River and has therefore caused and further threatens to cause a discharge of waste into waters of the state.
 12. The quantity and manner in which the dirt fill material was placed has created a threatened discharge of sediments to the Russian River which, unless removed, will prove deleterious to fish and other aquatic organisms, and cause the direct loss river flood water storage and flood peak attenuation and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan.. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the dirt fill material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
 13. The workplan required by this Order is necessary to ensure that the future threat to water quality created by the soil placement described above is properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
 14. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
 15. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day.
 16. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In

addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall perform the following cleanup and abatement actions:

1. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before September 12, 2003, that includes the following:

A plan for removing all of the dirt fill, which shall include a the location of an appropriate disposal site for removed dirt fill material. The plan shall also contain details on how the disposal site will be stabilized in order to prevent a sediment discharge from disturbed areas;

2. Following Executive Officer written concurrence, implement the workplan. All work to remove the dirt fill shall be completed before October 17, 2003.

Ordered by _____

Catherine A. Kuhlman
Executive Officer

August 29, 2003